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5 **UNITED STATES DISTRICT COURT**
6 **DISTRICT OF NEVADA**

7 DAVID SCHMIDT,)
8 vs.) Plaintiff,) Case No. 2:11-cv-00978-PMP-PAL
9 C.R. BARD, INC., et al.,))
10) Defendants.) **ORDER**
11)
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13 Before the court is the parties' Stipulated Protective Order Regarding Confidential Information
14 (Dkt. #31) which the court approved, with the exception of a portion of Paragraph 16, to facilitate
15 discovery in this case. This order also reminds counsel that there is a presumption of public access to
16 judicial files and records. A party seeking to file a confidential document under seal must file a motion
17 to seal and must comply with the Ninth Circuit's directives in *Kamakana v. City and County of*
18 *Honolulu*, 447 F.3d 1172 (9th Cir. 2006).

19 A portion of Paragraph 16 of the parties' proposed stipulation was not approved and was deleted
20 by the court. It contained provisions permitting the parties to file confidential information with the
21 Clerk of the Court in a sealed envelope. While this was an accepted practice prior to the adoption of the
22 court's electronic filing procedures, with a few exceptions not applicable here, the Clerk of the Court no
23 longer maintains paper records. Special Order 109 requires the Clerk of the Court to maintain the
24 official files for all cases filed on or after November 7, 2005, in electronic form. The electronic record
25 constitutes the official record of the court. Attorneys must file documents under seal using the court's
26 electronic filing procedures. *See* LR 10-5(b). That rule provides:

27 Unless otherwise permitted by statute, rule or prior Court order, papers filed
28 with the Court under seal shall be accompanied by a motion for leave to file
those documents under seal, and shall be filed in accordance with the Court's

1 electronic filing procedures. If papers are filed under seal pursuant to prior
2 Court order, the papers shall bear the following notation on the first page,
3 directly under the case number: "FILED UNDER SEAL PURSUANT TO
4 COURT ORDER DATED _____. All papers filed under seal will
remain sealed until such time as the Court may deny the motion to seal or
enter an order to unseal them, or the documents are unsealed pursuant to
Local Rule.

5 *Id.* Documents filed under seal are not accessible to the public.

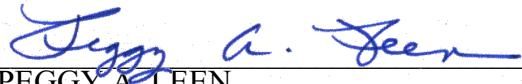
6 The court has approved the parties' blanket protective order to facilitate their discovery
7 exchanges. However, the parties have not shown, and court has not found, that any specific documents
8 are secret or confidential. The parties have not provided specific facts supported by affidavits or
9 concrete examples to establish that a protective order is required to protect any specific trade secret or
10 other confidential information under Rule 26(c) or that disclosure would cause an identifiable and
11 significant harm. The Ninth Circuit has held that there is a presumption of public access to judicial
12 files and records and that parties seeking to maintain the confidentiality of documents attached to non-
13 dispositive motions must show good cause exists to overcome the presumption of public access. *See*
14 *Kamakana* 447 F.3d at 1179. Parties seeking to maintain the secrecy of documents attached to
15 dispositive motions must show compelling reasons sufficient to overcome the presumption of public
16 access. *Id.* at 1180.

17 **IT IS ORDERED** that:

18 1. The provisions of Paragraph 16 of the parties' Proposed Stipulated Protective Order
19 (Dkt. #31) that requires them to file confidential material with the Clerk of Court in a
20 sealed envelope is **NOT APPROVED** and is **DENIED**.

21 2. The parties shall comply with the requirements of LR 10-5(b), and the Ninth Circuit's
22 decision in *Kamakana*, 447 F.3d 1172, with respect to any documents filed under seal.

23 Dated this 30th day of January, 2012.

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26 PEGGY A. LEEN
27 UNITED STATES MAGISTRATE JUDGE
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